

THE CITY OF SAN DIEGO, CALIFORNIA  
MINUTES FOR REGULAR COUNCIL MEETING  
OF  
TUESDAY, SEPTEMBER 28, 2004  
AT 9:00 A.M.  
IN THE COUNCIL CHAMBERS - 12TH FLOOR

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**CHRONOLOGY OF THE MEETING:**

The meeting was called to order by Mayor Murphy at 10:07 a.m. Mayor Murphy recessed the meeting at 10:54 a.m. for the purpose of a break. Mayor Murphy reconvened the meeting at 11:00 a.m. with all Council Members present and District 4 vacant. Mayor Murphy recessed the meeting at 11:32 a.m. to convene the Redevelopment Agency. Mayor Murphy reconvened the regular meeting at 11:57 a.m. with all Council Members present and District 4 vacant. The meeting was recessed by Mayor Murphy at 11:57 p.m. to reconvene at 2:00 p.m.

The meeting was reconvened by Mayor Murphy at 2:15 p.m. with Council Member Inzunza not present and District 4 vacant. Mayor Murphy recessed the meeting at 2:16 p.m. to reconvene the Redevelopment Agency. Mayor Murphy reconvened the regular meeting at 2:26 p.m. with all Council Members present and District 4 vacant. The meeting was recessed by Mayor Murphy at 3:42 p.m. for the purpose of a break. Mayor Murphy reconvened the meeting at 3:50 p.m. with all Council Members present and District 4 vacant. The meeting was adjourned by Mayor Murphy at 5:00 p.m.

**ATTENDANCE DURING THE MEETING:**

- (M) Mayor Murphy-present
- (1) Council Member Peters-present
- (2) Council Member Zucchet-present
- (3) Council Member Atkins-present
- (4) District Four-vacant
- (5) Council Member Maienschein-present
- (6) Council Member Frye-present

(7) Council Member Madaffer-present

(8) Council Member Inzunza-present

Clerk-Abdelnour/Maland (gs/pr)

FILE LOCATION: MINUTES

ITEM-300: ROLL CALL

Clerk Abdelnour called the roll:

- (M) Mayor Murphy-present
- (1) Council Member Peters-present
- (2) Council Member Zucchet-present
- (3) Council Member Atkins-present
- (4) District Four-vacant
- (5) Council Member Maienschein-present
- (6) Council Member Frye-present
- (7) Council Member Madaffer-present
- (8) Council Member Inzunza-not present

NON-AGENDA COMMENT:

PUBLIC COMMENT-1:

Don Stillwell commented on American history and prayer.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:08 a.m. – 10:10 a.m.)

**PUBLIC COMMENT-2:**

Jarvis Ross commented on the redevelopment system lacking programs.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:11 a.m. – 10:13 a.m.)

**PUBLIC COMMENT-3:**

Phil Hart commented on the financial situation in the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:14 a.m. – 10:16 a.m.)

**PUBLIC COMMENT-4:**

Ron Boshun commented on the actions of Council.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:17 a.m. – 10:19 a.m.)

**PUBLIC COMMENT-5:**

Sandy Summers commented on the upcoming election and law enforcement.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:20 a.m. – 10:22 a.m.)

**PUBLIC COMMENT-6:**

Ian Trowbridge commented on the ethics of Data Processing Corporation.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:23 a.m. – 10:25 a.m.)

**PUBLIC COMMENT-7:**

Francis Tepedino commented on the role of Council in regards to the City's finances.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:26 a.m. – 10:29 a.m.)

**PUBLIC COMMENT-8:**

Joyceline Tarr commented on Council Member Frye running for mayor and the trimming of palm trees on Newport Avenue.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:30 a.m. – 10:30 a.m.)

**PUBLIC COMMENT-9:**

Jeff Green commented on compliance with State regulations and safe drinking water.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:31 a.m. – 10:34 a.m.)

**COUNCIL COMMENT:**

**COUNCIL COMMENT-1:**

Council Member Atkins announced there was an event held in Balboa Park to pay tribute to those citizens who volunteer in parks throughout the City of San Diego.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 10:35 a.m. – 10:36 a.m.)

**COUNCIL COMMENT-2:**

Council Member Frye announced a fund raising golf tournament hosted by the Water Department at Carmel Mountain Ranch Golf Course. The money raised was donated to Angier Elementary School in Serra Mesa.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 10:37 a.m. – 10:37 a.m.)

**CITY MANAGER COMMENT:**

None.

**CITY ATTORNEY COMMENT:**

None.

ITEM-330: Virginia Way Street (Alley) Vacation.

(La Jolla Community Plan Area. District-1.)

**CITY MANAGER'S RECOMMENDATION:**

Adopt the following resolution:

(R-2005-259)                      ADOPTED AS RESOLUTION R-299695

Vacating a portion of the northerly terminus of the unimproved alley lying between High and Cabrillo Avenues north of Pearl Street, in Block 3, Map No. 915.

**CITY MANAGER SUPPORTING INFORMATION:**

City Council action is requested to vacate a portion of the northern terminus of the alley in Block 3, Map No. 915, lying between High and Cabrillo Avenues north of Pearl Street in the La Jolla Community Plan area within the Council District 1. The portion of the alley to be vacated is unimproved and is the northerly 25-foot length of the 20-foot wide alley. The applicant requests the vacation to utilize the vacated right-of-way for use of the existing development. The area to be vacated is adjacent to residentially zoned and developed property. A "General Utility and Access Easement" will be reserved over the area being vacated.

**FINDINGS:** Staff review has indicated the right-of-way may be summarily vacated. The 4 "findings" can be made.

1. That there is no prospective use for the right-of-way, either for the facility for which it was originally acquired or for any other public use of a like nature that can be anticipated.
2. That the public will benefit from the action through improved utilization of the land made possible by the alley vacation – The land will revert to private ownership and relieve the City of any liability.
3. That the vacation is not inconsistent with the General Plan, Community Plan or Local Coastal Program – The portion of alley being vacated is not part of the community transportation element and the La Jolla Community Planning Association recommends approval of the request.
4. That the facility for which the right-of-way was originally acquired will not be detrimentally affected by the street vacation – The right-of-way is not required for any future alley serving purposes and serves no public purpose.

**FISCAL IMPACT:**

None. All costs have been paid for by the applicant.

**NOTE:** This project is exempt from the California Environmental Quality Act pursuant to State CEQA Guidelines Section 15061(b)(3).

Loveland/Halbert/RMK

**FILE LOCATION:** STRT-J-2963 (39)

**COUNCIL ACTION:** (Time duration: 11:00 a.m. – 11:32 a.m.)

Testimony in opposition by Ron Stormoen and Tracy Morgan Hollingworth.

Testimony in favor by Cindy Eldred and Michael Pallamary.

MOTION BY PETERS TO ADOPT. Second by Zucchet. Passed by the following vote:  
Peters-yea, Zucchet-yea, Atkins-yea, District Four-vacant, Maienschein-nay, Frye-yea,  
Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

ITEM-331: First and Robinson.

Matter of approving, conditionally approving, modifying or denying a Site Development Permit, Map Waiver, and Easement Abandonment to waive the requirements for a Tentative Map and Final Map, abandon an existing sewer easement, modify the location of a historic structure, and develop a 25-unit, 4-story, residential condominium project with a partially subterranean parking structure with deviations to floor area ratio and the front yard, interior side yard, and rear yard setbacks. The project is located at 3815, 3817-3819, and 3821 First Avenue, north of Robinson Avenue within the MR-800B Zone of the Mid-City Communities Planned District and the Uptown Community Plan Area.

(Uptown Community Plan Area. District-3.)



**CITY MANAGER'S RECOMMENDATION:**

Adopt the resolutions in subitems A, B, and C; and adopt the resolution in subitem D to grant the permit:

Subitem-A: (R-2005-211) ADOPTED AS RESOLUTION R-299696

Adoption of a Resolution certifying that the information contained in Mitigated Negative Declaration LDR No. 20155, on file in the office of the City Clerk, has been completed in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code Section 21000 et seq.), as amended, and State guidelines thereto (California Code of Regulations Section 15000 et seq.), that the declaration reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in the report, together with any comments received during the public review process, has been reviewed and considered by this Council in connection with the approval of a site development permit, a map waiver and an easement abandonment for the First and Robinson project;

That the City Council finds that project revisions now mitigate potentially significant effects on the environment previously identified in the Initial Study and therefore, that the Mitigated Negative Declaration, a copy of which is on file in the office of the City Clerk and incorporated by reference, is approved;

That pursuant to California Public Resources Code Section 21081.6, the City Council adopts the Mitigation Monitoring and Reporting Program, or alterations to implement the changes to the project as required by this body in order to mitigate or avoid significant effects on the environment, a copy of which is attached hereto, and incorporated herein by reference;

That the City Clerk is directed to file a Notice of Determination [NOD] with the Clerk of the Board of Supervisors for the County of San Diego regarding the above project.

Subitem-B: (R-2005-212) ADOPTED AS RESOLUTION R-299697

Adoption of a Resolution stating that the sewer easement located within the Uptown Community Planning area in connection with Site Development Permit No. 49312 and Map Waiver No. 49311, as more particularly described in the legal

description marked as Exhibit "A," on file in the office of the City Clerk, which is by this reference incorporated herein and made a part hereof, is ordered vacated;

That the City Clerk shall cause a certified copy of this resolution, with attached exhibits, attested by him under seal, to be recorded in the office of the County Recorder.

Subitem-C: (R-2005-282) ADOPTED AS RESOLUTION R-299698

Adoption of a Resolution adopting findings with respect to Map Waiver No. 49311;

That the recommendation of the Planning Commission is sustained, and Map Waiver is granted to DMH 1<sup>st</sup> and Robinson, LLC, Applicant/Subdivider and Project Design Consultants, Engineer, subject to the attached conditions which are made a part of this resolution;

That this map waiver is conditioned on the recordation of a lot consolidation map. In the event this condition is not completed within two years following the adoption of this resolution, then this resolution shall become void and be of no further force or effect.

Subitem-D: (R-2005- ) GRANTED PERMIT, ADOPTED AS RESOLUTION R-299699

Adoption of a Resolution granting or denying Site Development Permit No. 49312, with appropriate findings to support Council action.

**OTHER RECOMMENDATIONS:**

Planning Commission on August 19, 2004, voted 6-0 to approve; no opposition.

Ayes: Steele, Otsuji, Schultz, Chase, Ontai, Garcia  
Recusing: Lettieri

The Uptown Planners Community Planning Group has recommended approval of this project.

**CITY MANAGER SUPPORTING INFORMATION:**

The 3.88-acre project site is located at 3815, 3817-3819, and 3821 First Avenue between Robinson Avenue and University Avenue within the Uptown Community Plan Area. The project site is located within the MR-800B Zone of the Mid-City Communities Planned District and the Transit Area Overlay Zone. The site is surrounded by a mix of single-family and multi-family residential development with commercial establishments to the north along University Avenue. The applicant is requesting a Site Development Permit, Map Waiver, and an easement abandonment in order to relocate a locally designated historic structure on site, and develop the site with 25 residential condominiums located within two 2-story buildings and two 4-story buildings. The buildings are proposed above a partially subterranean parking garage that provides 43 parking spaces.

The project is subject to a Process 5 City Council Hearing due to the request for the easement abandonment. A private sewer lateral easement has been granted to the City, which was recorded in October 1922. The location of the easement cannot be determined from record information. The applicant is requesting the abandonment of this easement in order to develop the site.

The project is in conformance with the permitted density, recommendations of the Uptown Community Plan, and all of the applicable development regulations of the MR-800 B zone, except for the deviations to floor area ratio and interior side, front, and rear yard setbacks. These deviations may be permitted through the Site Development Permit and are being requested by the applicant in order to retain the historic house, maintain adequate separation between the historic resource and the new development, and to accommodate a 2.5-foot alley dedication, which shifted the project further towards First Avenue. Staff analysis of the project has concluded that the requested deviations are minor in scope, and that the project has been designed to integrate well into the surrounding development.

Additionally, the proposed setbacks provide adequate separation from the adjacent properties and help break up bulk and scale. Staff has also determined that the proposed Map Waiver to waive the requirements of a tentative map and final map complies with the State Map Act and the Subdivision regulations of the Land Development Code.

The project was considered by the Planning Commission during a public hearing on August 19, 2004, which recommended that the City Council approve the project by a vote of 6-0 with 1 abstention.

**FISCAL IMPACT:**

None with this action. Project costs are paid by the applicant.

Loveland/Halbert/FZT

**FILE LOCATION:** SUBITEMS A, C, & D: LUP-First and Robinson 9/28/04  
(65)  
SUBITEM B: DEED F-9821

**COUNCIL ACTION:** (Time duration: 10:38 a.m. – 10:44 a.m.)

MOTION BY ATKINS TO ADOPT THE RESOLUTIONS IN SUBITEMS A, B, and C;  
AND ADOPT THE RESOLUTION IN SUBITEM D TO GRANT THE PERMIT.

Second by Madaffer. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea,  
District Four-vacant, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-not present,  
Mayor Murphy-yea.

ITEM-332: Aero Drive 3 – Retail Building.

Matter of approving, conditionally approving, or denying a Planned Development Permit, Site Development Permit, and Right-of-Way Vacation (Process 5) to construct a 7,200 square foot retail building and parking lot on an undeveloped land area. The 1.123 acre site is located east of Murphy Canyon Road, south of Aero Drive, west of Interstate 15, in the CC-1-3 Zone, Airport Environs Overlay Zone, within the Kearny Mesa Community Plan area.

(See City Manager Report CMR-04-203. MND No. 6729/MMRP/PDP No. 56270/SDP No. 56271/Street Vacation Easement No. 37090/PTS No. 6729. Kearny Mesa Community Plan Area. District-6.)

**CITY MANAGER'S RECOMMENDATION:**

Adopt the resolutions in subitems A and C; and adopt the resolution in subitem B to grant the permits:

**Subitem-A: (R-2005-137) ADOPTED AS RESOLUTION R-299700**

Adoption of a Resolution certifying that the information contained in Environmental Mitigated Negative Declaration LDR No. 6729, has been completed in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code section 21000 et seq.), as amended, and the State guidelines thereto (California Code of Regulations section 15000 et seq.), that the declaration reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in the report, together with any comments received during the public review process, has been reviewed and considered by this Council in connection with the approval of a planned development permit, site development permit, and right-of-way vacation for the Aero Drive Three project;

That the City Council finds that project revisions now mitigate potentially significant effects on the environment previously identified in the Initial Study and therefore, that the Mitigated Negative Declaration, is approved;

That pursuant to California Public Resources Code section 21081.6, the City Council adopts the Mitigation Monitoring and Reporting Program, or alterations to implement the changes to the project as required by this body in order to mitigate or avoid significant effects on the environment;

That the City Clerk is directed to file a Notice of Determination [NOD] with the Clerk of the Board of Supervisors for the County of San Diego regarding the above project.

**Subitem-B: (R-2005- ) GRANTED PERMITS, ADOPTED AS RESOLUTION R-299701**

Adoption of a Resolution granting or denying Planned Development Permit No. 56270 and Site Development Permit No. 56271, with appropriate findings to support Council action.

**Subitem-C: (R-2005-138) ADOPTED AS RESOLUTION R-299702**

Adoption of a Resolution stating that the street vacation easement located within Kearny Mesa Community Plan area in connection with Planned Development Permit No. 56270 and Site Development Permit No. 56271, as more particularly

described in the legal description marked as Exhibit “A,” and shown on Drawing No. 20029-B, marked as Exhibit “B,” and on file in the office of the City Clerk, which are by this reference incorporated herein and made a part hereof, is ordered vacated reserving there from a street easement for site development together with ingress and egress for that purpose;

That said street vacation is conditioned upon approval and issuance of Planned Development Permit No. 52670/Site Development Permit No. 56277. In the event this condition is not completed within two years following the adoption of this resolution, then this resolution shall become void and be of no further force or effect;

That the City Engineer shall advise the City Clerk of the completion of the aforementioned condition and the City Clerk shall cause a certified copy of this resolution, with attached exhibits, attested by him under seal, to be recorded in the office of the County Recorder;

That the City clerk shall cause a certified copy of this resolution, with attached exhibits, attested by him under seal, to be recorded in the office of the County Recorder.

**OTHER RECOMMENDATIONS:**

Planning Commission on June 17, 2004, voted 5 – 0 to approve; no opposition.

Ayes: Chase, Steele, Garcia, Ontai, Otsuji

Recusing: Schultz

Not present: Lettieri

The Kearny Mesa Planning Group has recommended approval of the proposed project.

**CITY MANAGER SUPPORTING INFORMATION:**

**Background**

The 1.1-acre project site is located east of Murphy Canyon Road, south of Aero Drive, and west of Interstate 15, in the CC-1-3 Zone, Airport Environs Overlay Zone (Montgomery Field), and Stonecrest Specific Plan area of the Kearny Mesa Community Plan. The CC-1-3 Zone is a commercial-community zone intended to accommodate development with an auto orientation. The project is also designated for regional-commercial use within the Stonecrest Specific Plan.

Project Description

The project proposes the construction of a 7,200 square-foot, 31.5-foot high, single-story retail building and parking lot on an undeveloped 1.1-acre site. The property is owned by the City of San Diego and would be leased to the project applicant through a lease agreement with the Real Estate Assets Department. The physical design of the proposed retail building includes a cement plaster exterior with architectural cornices, and a mission-style clay tile roof.

**FISCAL IMPACT:**

None.

Loveland/Halbert/MJW/DM

**LEGAL DESCRIPTION:**

The site is located east of Murphy Canyon Road, south of Aero Drive, and west of I-15, within the CC-1-3 zone, airport Environs Overlay Zone, Kearny Mesa Community Plan area and is more particularly described as Lot 4 of Map 13072 & Lot 16 of Map 13072.

FILE LOCATION: SUBITEMS A & B: LUP-Aero Drive 3, 9/28/04 (65)  
SUBITEM C: DEED F-9822

COUNCIL ACTION: (Time duration: 10:44 a.m. – 10:53 a.m.)

MOTION BY FRYE TO ADOPT THE RESOLUTIONS IN SUBITEMS A and C; AND ADOPT THE RESOLUTION IN SUBITEM B TO GRANT THE PERMITS WITH THE FOLLOWING DIRECTIONS: TO REFER TO THE CITY MANAGER COUNCIL POLICY 900-14 TO INCORPORATE THE REQUIREMENT THAT PRIVATE DEVELOPMENT THAT IS ON CITY PROPERTY LOOK AT THE SUSTAINABLE BUILDING GUIDELINES IN PLACE AND COME BACK TO COUNCIL IN 60 DAYS. Second by Atkins. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, District Four-vacant, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

ITEM-333: Two actions related to Ground Lease Approval with Baltimore Drive, LLC, to Develop, Operate, and Maintain a Retail Commercial Building on 1.12 Acres of City-Owned Property.

(Kearny Mesa Community Area. District-6.)

**CITY MANAGER'S RECOMMENDATION:**

Adopt the following resolutions:

Subitem-A: (R-2005-50) ADOPTED AS RESOLUTION R-299703

Authorizing the City Manager to execute a forty-year lease agreement with Baltimore Drive, LLC, to develop, operate, and maintain a retail commercial building on 1.12 acres of City-owned property at an annual rental of \$28,000, following a one-year construction period rental of \$6,000, under substantially the terms and conditions set forth in that certain lease agreement.

Subitem-B: (R-2005-53) ADOPTED AS RESOLUTION R-299704

Certifying that Mitigated Negative Declaration LDR No. 6729, has been completed in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code Section 21000 et seq.), as amended, and the State guidelines thereto (California Code of Regulations Section 15000 et seq.), that the declaration reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in the report, together with any comments received during the public review process, has been reviewed and considered by this Council in connection with the approval of a 40-year lease agreement with Baltimore Drive, LLC;

Approving the Mitigated Negative Declaration;

Adopting the Mitigation Monitoring and Reporting Program, pursuant to California Public Resources Code Section 21081.6;

Directing the City Clerk to file a Notice of Determination (NOD) with the Clerk of the Board of Supervisors for the County of San Diego regarding the above project.



**CITY MANAGER SUPPORTING INFORMATION:**

In February 2002, the LU&H Committee approved exclusive negotiations with Baltimore Drive, LLC, to ground lease and develop a portion of City-owned Old Murphy Canyon Road right-of-way. Located at the southwest corner of Aero Drive and Interstate 15, this 1.12-acre commercially zoned vacant land will be improved by the lessee with a 7,200-square-foot retail building. Baltimore Drive, LLC, owns the commercial development adjacent to the City's property and has spent the past two years in securing the entitlements to develop this proposed project, estimated to cost \$1.9 million.

Proposed for approval is a 40-year ground lease with Baltimore Drive, LLC. Initial rent during the construction period is \$500 per month, not to exceed one year. Upon completion of the improvements, the monthly rent will start at \$2,334 and be subject to annual increases based on the Consumer Price Index or 5 percent of the previous rent, whichever is greater. All costs of entitlement processing, construction, and future maintenance are being borne by the lessee. The City's property is valued at \$280,000 in its "as-is" condition based on an independent fee appraisal done in March 2004, which has been reviewed and approved by City staff.

Lease of this portion of the Old Murphy Canyon Road necessitates approval by the City Council of a street vacation, which is being presented to Council as a companion item. Murphy Canyon Road was relocated about 10 years ago, leaving this old right-of-way that is no longer needed for street use.

**FISCAL IMPACT:**

\$6,000 the first year and \$28,000 the second year will be deposited into General Fund 100.

Herring/Griffith/PTC

**FILE LOCATION:** LEAS-Baltimore Drive, LLC

**COUNCIL ACTION:** (Time duration: 10:53 a.m. – 10:54 a.m.)

MOTION BY FRYE TO ADOPT. Second by Atkins. Passed by the following vote:  
Peters-yea, Zucchet-yea, Atkins-yea, District Four-vacant, Maienschein-yea, Frye-yea,  
Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

ITEM-S500: Adding and Amending Sections to the San Diego Municipal Code All Relating to the City's Financial Reporting and Disclosure.

(See City Attorney Report No. 2004-19, City Manager Report CMR-04-213, and memorandum from the City Attorney dated 9/24/2004.)

**CITY ATTORNEY'S RECOMMENDATION:**

Introduce the following ordinance:

(O-2005-37)                      INTRODUCED AS AMENDED, TO BE ADOPTED ON  
MONDAY, OCTOBER 11, 2004

Introduction of an Ordinance amending the San Diego Municipal Code by amending Chapter 2, Article 6 by adding New Division 17, titled "Financial Reporting Oversight Board" and adding New Sections 26.1701, 26.1702, 26.1703, 26.1704, 26.1705, and 26.1706; amending Chapter 2, Article 2, Division 3 by adding New Sections 22.0302, 22.0303, and 22.0304; amending Chapter 2, Article 2 by adding New Division 41, titled "Securities Disclosure" and adding New Sections 22.4101, 22.4102, 22.4103, 22.4104, 22.4105, 22.4106, 22.4107, 22.4108, 22.4109, 22.4110, 22.4111, and 22.4112; amending Chapter 2, Article 4, Division 9 by amending Section 24.0911; and amending Chapter 2, Article 2, Division 7, by adding New Sections 22.0708 and 22.0709; all relating to the City's Financial Reporting and Disclosure.

**SUPPORTING INFORMATION:**

On February 11, 2004, the City Council commissioned the law firm of Vinson & Elkins to review the City's disclosure practices from January 1996 through February 2004 and to investigate whether the City has failed to meet disclosure obligations concerning its funding of the San Diego City Employees Retirement System. On September 16, 2004, a report was issued by Vinson & Elkins representing the culmination of a six month investigation. The Vinson & Elkins report describes disclosure deficiencies in the processes utilized by the City to provide information to the financial markets. The Report also contains recommendations including a proposed ordinance designed to improve the quality of the City's disclosures. The City Council considered and accepted the Report on September 20, 2004, and as a part of that action directed the City Attorney to return with the proposed ordinance for consideration by the City Council.

Gwinn/Girard/Duvernay

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 2:29 p.m. – 4:57 p.m.)

MOTION BY MAINSCHEIN TO INTRODUCE THE ORDINANCE AS AMENDED BY INTERLINEATIONS AS FOLLOWS:

SECTION 26.1701, PURPOSE AND INTENT, (C) TO READ “THE CITY COUNCIL RECOGNIZES THAT SELECTING THE MEMBERS OF THE FINANCIAL REPORTING OVERSIGHT BOARD IS LIKELY TO REQUIRE SOME TIME, AND IT IS THE INTENT OF THE CITY COUNCIL THAT, IF POSSIBLE, THE FINANCIAL REPORTING OVERSIGHT BOARD SHALL BE FULLY CONSTITUTED AND PREPARED TO ASSUME ITS DUTIES AS SOON AS POSSIBLE, BUT NO LATER THAN APRIL 25, 2005.”

SECTION 26.1702, FINANCIAL REPORTING OVERSIGHT BOARD, (A) TO READ: “PURSUANT TO CITY CHARTER SECTION 43 (A), THERE IS HEREBY CREATED A FINANCIAL REPORTING OVERSIGHT BOARD CONSISTING OF THREE MEMBERS. THE MEMBERS SHALL BE APPOINTED BY THE MAYOR AND CONFIRMED BY THE CITY COUNCIL. EACH OF THE MEMBERS SHALL BE A PERSON OF HIGH MORAL CHARACTER AND INTEGRITY WITH EXTENSIVE ACADEMIC OR PROFESSIONAL EXPERIENCE IN THE FIELDS OF FINANCE, ACCOUNTING, OR LAW, WITH AT LEAST ONE EXPERT IN ACCOUNTING AND AT LEAST ONE EXPERT IN FEDERAL SECURITIES LAW. THE MEMBERS SHALL NOT BE MEMBERS OF RELATED ENTITIES AS DEFINED IN SECTION 22.4102, OR ANY OTHER BOARD OR COMMISSION OF THE CITY OF SAN DIEGO.”

SECTION 26.1703, DUTIES AND FUNCTIONS, (B) TO READ: “MEET PERIODICALLY, BUT NO LESS THAN EVERY THREE (3) MONTHS, AND IN SEPARATE MEETINGS WITH THE CITY AUDITOR AND COMPTROLLER, THE CITY’S INDEPENDENT AUDITOR, AND THE REPRESENTATIVES OF THE CITY’S DISCLOSURE PRACTICES WORKING GROUP. THE BOARD’S MEETINGS SHALL BE SUBJECT TO THE CALIFORNIA BROWN ACT.”

SECTION 22.4111, CERTIFICATIONS TO CITY OFFICIALS TO THE CITY COUNCIL, (A) TO READ: “IN CONNECTION WITH THE APPROVAL OF OFFERING DOCUMENTS FOR SECURITIES BY THE CITY COUNCIL, THE CITY MANAGER AND THE CITY ATTORNEY EACH SHALL CERTIFY IN WRITING TO THE CITY COUNCIL THAT TO THE BEST OF HIS OR HER KNOWLEDGE,

SUCH DOCUMENTS DO NOT MAKE ANY UNTRUE STATEMENT OF A MATERIAL FACT OR OMIT TO STATE A MATERIAL FACT NECESSARY IN ORDER TO MAKE THE STATEMENTS MADE, IN THE LIGHT OF THE CIRCUMSTANCES UNDER WHICH THEY WERE MADE, NOT MISLEADING. IN THE EVENT THAT THE CITY MANAGER OR THE CITY ATTORNEY IS MEDICALLY INCAPACITATED OR PHYSICALLY ABSENT FROM THE JURISDICTION, A DEPUTY OR OTHER AUTHORIZED DESIGNEE OF SUCH OFFICER MAY MAKE THE CERTIFICATION REQUIRED BY THIS SECTION.”

SECTION 24.0911, ANNUAL REPORT, (A) TO READ: “THE RETIREMENT BOARD SHALL PREPARE AN ANNUAL REPORT AT THE END OF EACH FISCAL YEAR TO PROVIDE INFORMATION TO ALL MEMBERS CONCERNING THE SYSTEM. COPIES OF THE ANNUAL REPORT SHALL BE DISTRIBUTED TO ALL MEMBERS. THE RETIREMENT ADMINISTRATOR SHALL KEEP A COPY OF THE ANNUAL REPORT IN HIS OR HER OFFICE.”

SECTION 22.0708, ANNUAL REPORT ON INTERNAL CONTROLS, (B) TO READ: “THE CITY MANAGER AND THE CITY AUDITOR AND COMPTROLLER SHALL SUBMIT A WRITTEN ANNUAL REPORT OF THEIR FINDINGS TO THE CITY COUNCIL AND THE FINANCIAL REPORTING OVERSIGHT BOARD ON OR BEFORE JANUARY 1 OF EVERY YEAR, BEGINNING WITH JANUARY 1, 2006, AND SUCH ANNUAL REPORT SHALL BE DOCKETED FOR AN OPEN SESSION HEARING OF THE CITY COUNCIL WITHIN THIRTY (30) DAYS THEREAFTER. ACCOMPANYING SUCH ANNUAL REPORT SHALL BE A CERTIFICATION SIGNED BY THE CITY MANAGER AND THE CITY AUDITOR AND COMPTROLLER, CERTIFYING THAT THEY...”

TO ACCEPT AS PART OF THE MOTION THE REQUEST BY COUNCIL MEMBER FRYE TO COME BACK TO COUNCIL WITHIN 30 DAYS WITH AN AMENDMENT TO THE PERMANENT RULES OF COUNCIL THAT DISCLOSURE DOCUMENTS ARE NOT TO BE DOCKETED ON CONSENT, OR ON SUPPLEMENTALS.

TO ACCEPT AS PART OF THE MOTION THE REQUEST BY COUNCIL MEMBER FRYE TO REPORT BACK TO COUNCIL WITHIN 120 DAYS REGARDING ENTITIES, AND THEIR STRUCTURE.

TO ACCEPT AS PART OF THE MOTION THE REQUEST BY COUNCIL MEMBER MADAFFER THAT THE CITY MANAGER COME BACK WITH RECOMMENDATIONS BASED ON THE VINCENT AND ELKINS REPORT

WITHIN 60 DAYS, AND TO INCLUDE CODIFYING THE REQUIREMENT THAT FOOTNOTES BE GENERATED BY THE AUDITOR IN FINANCIAL REPORTS.

ALSO, TO ACCEPT AS PART OF THE MOTION THE REQUEST BY COUNCIL MEMBER MADAFFER THAT THE CITY MANAGER REPORT BACK TO COUNCIL REGARDING THE CONCEPT OF DOCKETING CAFR FOR OPEN SESSION DISCUSSION. Second by Inzunza. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, District Four-vacant, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

**NON-DOCKET ITEMS:**

None.

**ADJOURNMENT:**

The meeting was adjourned by Mayor Murphy at 5:00 p.m. in honor of the memory of:

Barbara Hutchinson as requested by Council Member Madaffer.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 4:59 p.m. – 5:00 p.m.)